IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2007

CORAM

THE HONOURABLE MR.JUSTICE DHARMA RAO ELIPE
AND
THE HONOURABLE MR.JUTICE S. PALANIVELU

WRIT APPEAL No. 1482 of 2001

Central Bank of India Staff Union,
(Regn. No. 744/MDS)
rep. by its General Secretary,
62, Canal Bank Road,
C.I.T. Nagar, Chennai - 35. ..Appellant

Vs.

1. Central Bank of India,
rep. by its Zonal Manager,
48/40, Montieth Road,
Egmore, Chennai - 600 008.

2. Central Bank of India Employees
Union, rep. by its General Secretary,
11, Second Line Beach,
Chennai - 600 001.
(R2 impleaded as per order of this Court dt.
28.10.1999 in W.M.P. No. 7283/1993) ..Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters patent against the order dated 14.12.2000 in W.P. No. 15790/1992. Presented to this Court under Article 226 Constitution of India to issue a writ of Mandamus directing the respondent Bank to permit Mr. S. R. Iyengar, to take the qualifying test for Promotion to Junior Management Grade I, and promote him on that basis with effect from 16.12.1991 with Consequential Seniority arrears of pay and all other benefits.

For Appellant :: Mr.N.G.R. Prasad for
M/s. Row & Reddy
For Respondents :: Mr.T.M. Hariharan

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J U D G M E N T

(Judgment of the Court was delivered by Dharma Rao Elipe,J.)

The writ appeal is directed against the order dated 14.12.2000 of the learned Single Judge dismissing the writ petition filed for issue of a Writ of Mandamus directing the respondent Bank to permit S.R. Iyengar to take the qualifying test for promotion to Junior Management Grade I and promote him on that basis with effect from 16.12.1991 with consequential seniority, arrears of pay and all other benefits.

2. The case of the appellant is that one S.R. Iyengar joined the respondent Central Bank of India on 13.1.1973 as a clerk. During December, 1990, the post of Assistant Head Cashier became vacant and S.R. Iyengar was issued with orders of posting for the said post on 30.5.1991. The said Iyengar declined to accept the post as he did not want to work in the cash Department. Due to this, the Bank debarred him for promotion for one year. As per the respondent Bank's promotion policy, if an employee declines an acting assignment in another post, he would be debarred from promotion for a period of one year. Subsequently, the promotion test for Junior Management Grade I was called for to fill up 12 vacancies. Two persons, who were seniors to S.R. Iyengar were called for the test. According to the appellant, S.R. Iyengar was not called, though he was at Serial No.14 in the seniority list dated 1.1.1991 pertaining to clerks. The appellant Union came to know that the said two persons, who were senior to S.R. Iyengar, were not offered the acting assignment in May, 1991 before S.R. Iyengar was offered. The appellant Union made a representation on 23.9.1991 to the Bank stating that the said two persons should have been offered the post of Assistant Head Cashier and only after they had turned down the offer, the said post should have been offered to Mr.Iyengar. In such a case, those two persons ought to have been debarred from promotion for one year. Thereafter, the respondent Bank agreed to withdraw the debarment order but the order was withdrawn only on 24.12.1991 and served on Mr.Iyengar on 30.12.1991 well after the said two seniors were promoted on 16.12.1991. According to the appellant, in the year 1991, there were 12 vacancies out of which, only 10 were filled up. Two vacancies remained unfilled since two persons who were promoted, refused to accept the same. After withdrawal of the debarment order, the Bank issued a letter on 30.12.1991 informing Iyengar that he was eligible for promotion for Junior Management Grade I as per the seniority list of clerks published as on 1.1.1991 and he was asked to appear for the test on 24.4.1992. But, the

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written test was postponed. Thereafter, the respondent Bank notified 6 vacancies for 1992 including 2 vacancies of 1991 and the written test was scheduled to be held on 19.10.1992. According to the appellant, the said Iyengar should have been considered first for the 2 vacancies of the year 1991, he being a senior, who was illegally denied promotion for the year 1991. However, he was not called for the test that was held on 19.10.1992 and in the revised seniority list of clerks published in 1992, he was shown at Serial No.13 as his position got pushed down due to the fact that certain seniors who were duly debarred from promotion earlier had become qualified and had regained their seniority position among clerks. Aggrieved over the action of the respondent Bank, the appellant filed W.P. No. 15790 of 1992 and pursuant to the interim orders of this Court, S.R. Iyengar was allowed to take up the test which was held on 28.12.1992. Though he was successful in the said test, yet, he could not be promoted for the reason that there were senior candidates available in the seniority list to fill up the then existing vacancies and it was only in 19.12.1994, he was promoted. In the said writ petition, the respondent Bank filed a detailed counter affidavit resisting the contention that S.R. Iyengar became eligible for promotion in the year 1991 itself and that he ought to have been promoted with effect from 16.12.1991. On 14.12.2000, this Court, on consideration of the materials on record and the submissions made by the learned counsel on either side, dismissed the writ petition and challenging the same, the above writ appeal has been filed.

3. According to the learned counsel for the appellant, as per the seniority list furnished by the Bank, S.R. Iyengar was Serial No.14. Two candidates at Serial Nos. 1 and 5 were not eligible for being considered for promotion. Therefore, for the 12 vacancies in the ratio of 1:1:25, 15 candidates were eligible for being called and accordingly, S.R. Iyengar was eligible for being called for 1991 promotion process. Since, he was eligible and he also got through the promotion test for the year 1991 vacancies, he should have been promoted for the 1991 vacancy and not for the 1994 vacancy. Learned counsel would also submit that there were 2 vacancies for the year 1991 and they were carried forward to 1992, the benefit of promotion should have been given to S.R. Iyengar in respect of two carry forward vacancies because the vacancies related to 1991 and he had passed the exam in the year 1992 for 1991 vacancies. Admittedly, according to the learned counsel, in the seniority lisgt prepared as on 1.1.1991, three persons occupying Serial Nos. 1, 2 and 3 did not appear for the promotion test. The person at Serial No.7 was under suspension. Two others did not accept promotion. Consequently, employees occupying Serial Nos. 4 to 6 and 8 to 13 were promoted, out of whom, those at Serial Nos. 6 and 10 did not

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accept the promotion. Hence, the learned Judge ought to have held that S.R. Iyengar was within the zone of consideration. Moreover, when he came out successful in the test, the Bank should have promoted him with effect from 1991 and by not doing so, great injustice has been caused to S.R. Iyengar.

4. On the other hand, the learned counsel for the respondent Bank, would contend that under the Promotion Policy Agreement, the procedure to be followed while calling the candidates is as follows:

> "(i) 25% more than the vacancies to be called.
> (ii) If the number includes candidates who had earlier appeared/called for the test, additional fresh candidates should be called; and
> (iii) However, number of fresh candidates should not exceed the number of actual vacancies."

The learned counsel submitted that for the year 1991, 9 vacancies were identified in the general category for Junior Management Grade I. One candidate, who had qualified for promotion in the earlier year, but was not promoted in 1990 for want of vacancies, was granted promotion in 1991. As such, the vacancies to be filled up for the year 1991 was arrived at eight and in the seniority list, S.R. Iyengar occupied the 15th place. As per the promotion policy agreement, to fill up the net vacancy of eight, 10 candidates had to be called for the test. As one candidate was already granted promotion, candidates upto Serial No.13 had to be called for the promotion test excluding 2 candidates, who were not eligible. Though promotion orders were issued for 9 candidates on 16.12.1991, two of the promotees declined to accept promotion and the vacancies caused could not be filled up before the end of the calendar year 1991. According to the learned counsel, the withdrawal of debarment imposed on S.R. Iyengar, in no way affected his promotion, as he ranked only at No.15 in the seniority list and only candidates upto Serial No.13 in the seniority list were eligible to be called for the promotion test. Further, it has throughout been the established practice right from the evolution of the promotion policy agreement to carry over unfilled vacancies to the subsequent year. Hence, in the circumstances, the test scheduled in April, 1992 basing on the seniority list of 1991 could not be held as it was realised that the same is against the policy and conducting such a second process of promotion basing on the seniority list of a particular year would throw up numerous such demands, past and future, contrary to established practice. It is the submission of the learned counsel that in 1992, in the common seniority list of clerks, in the general category, S.R. Iyengar was placed at Serial No.12 and number of vacancies to be filled up, including two vacancies of the previous year was four. As

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per the promotion policy agreement, clerks till Serial No.9 alone were eligible to be called for the promotion test and out of six candidates, who got through in the test, only four candidates would be promoted and the remaining two were empanelled as they could not be promoted for want of vacancies. Even in the year 1993, four vacancies were identified in the general category and candidates upto Serial No.6-A alone were eligible and the said S.R. Iyengar was in the 9th place as per the seniority list. Ultimately, only in 1994, S.R. Iyengar, who occupied the 6th place, became eligible to be promoted and he was accordingly promoted with effect from 19.12.1994. According to the learned counsel, since it is not the practice to undertake a second promotion process in any year and unfilled vacancies, if any, of a particular year are carried over to the immediately succeeding year and though, S.R. Iyengar passed the test pursuant to the orders of this Court in 1992, he was empanelled and he could be promoted only in the year 1994. The promotion process has been done in accordance with the established procedure and no mala fide, whatsoever, can be attributed to the respondent Bank.

5. Heard the learned counsel on either side and perused the materials on record. In paragraph 6 of the counter affidavit filed by the respondent Bank, it is stated as follows:

> "However, in the year 1992, when the Bank decided to conduct a promotion test basing on the seniority list of 1991 again, Mr.S.R. Iyengar was called for the test to be held on 24.4.1992 as he was eligible as at the cut-off point of 31.12.1991. However, the written test for promotion could not be held on 24.4.1992 on realisation by the Bank that conducting a second test basing on 1991 seniority again in 1992 would throw up demands for such second promotion process in future too.

It is evident from the above extract that only on realising the mistake committed by them, due to which S.R. Iyengar was deprived of his promotion, the Bank had taken the decision to conduct a second test and according to the above extract, the said employee became eligible to be considered for promotion in the year 1991 itself and therefore, the contention of the learned counsel for the respondent Bank that in a calendar year, a second promotion test is not conducted is not correct. Further, the action of the Bank in imposing debarment for not accepting the post of Assistant Head Cashier, without offering the said post to two other persons, who were senior to him and lifting the said debarment after effecting promotions on 16.12.1991, clearly shows the mala fide intention of the respondent Bank. For the above reasons, we are of the opinion that S.R. Iyengar has been deprived of his legitimate promotion and accordingly, we set

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aside the order of the learned Single Judge. The writ appeal is allowed. We are informed that the said S.R. Iyengar has retired from service. The Bank is directed to give notional promotion to him with effect from 16.12.1991 and pay the monetary benefits as he would be entitled to on regular promotion within a periof 4 weeks from the date of receipt of a copy of this order. However, it is made clear, this judgment shall not be taken as a precedent in future cases. No costs.

nv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Zonal Manager,
Central Bank of India,
48/40, Montieth Road,
Egmore, Chennai - 600 008.

+ 1 cc to M/s. T. M. Hariharan, Advocate SR No. 21918

+ 1 cc to M/s. Row & Reddy, Advocate SR No. 21642

W.A. No. 1482 of 2001

AKR(CO)
SR/14.5.2007

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